**RESPONSE TO CONSULTATION 'FISHERIES REFORM: PROPOSED AMENDMENTS TO THE FISHERIES ACT'**

**FROM THE ROYAL FOREST & BIRD PROTECTION SOCIETY OF NEW ZEALAND INCORPORATED**

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| **To** | **Fisheries Policy Team - Policy and Trade Branch. Ministry for Primary Industries.** |
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Forest & Bird
TE REO O TE TAIAO | Giving Nature a Voice

**Contents**

Forest & Bird
TE REO O TE TAIAO | Giving Nature a Voice

## INTRODUCTION

1. The Royal Forest and Bird Protection Society Incorporated (Forest & Bird) has served as Aotearoa New Zealand's independent voice for nature since 1923. Forest & Bird's constitutional purpose is to "take all reasonable steps within the power of the Society for the preservation and protection of the indigenous flora and fauna, as well as the natural features of New Zealand."

2. With over 100,000 members and supporters and approximately 47 volunteer branches, Forest & Bird is dedicated to protecting and restoring nature in rural and urban areas across the country.

3. Forest & Bird's strategic plan (2020-2025) includes the objective 'Oceans Alive - Protecting and restoring marine life and ecosystems'. One of the methods of achieving this objective, and of relevance to this consultation is 'Backed by science – Underpinning every decision made with the best available science'[1]. Our operational plan also includes specific objectives aimed to protect the marine environment, such as reducing bycatch to zero, promoting ecosystem-based fisheries management (EBFM) as default and ensuring the transparency of cameras on boats.

4. Forest & Bird launched its first bycatch campaign in 1989 to stop kekeno/New Zealand fur seals being killed by hoki boats off the West Coast. Attracted by fish spilling from the boat, the seals would get caught up in the fishing nets and drown. Once mitigation measures were put in place, seal populations bounced back and now number more than 200,000[2].

5. Over the next 35 years, Forest & Bird has successfully campaigned for better protections for marine mammals, fish and seabirds, greater marine protection and EBFM. In 2004, Forest & Bird published the country's first Best Fish Guide[3], showing which fish species were sustainably caught, and those that weren't. Thanks to our supporters, volunteers, and donors, Forest & Bird has also secured new marine reserves, achieved '3 out of 3' seabird bycatch mitigation measures in surface longline fisheries and continue to protect and restore seabird habitats on the mainland through volunteer branch 'on the ground' projects and advocacy work.

[1] The Royal Society of Forest and Bird Inc. – Strategic Plan 2020: https://www.forestandbird.org.nz/sites/default/files/2020-07/4.0%20Strategy%20Final%202020%20%28short%29.pdf
[2] Department of Conservation - New Zealand fur seal/kekeno: https://www.doc.govt.nz/nature/native-animals/marine-mammals/seals/nz-fur-seal/#:~:text=Population%3A%20the%20last%20total%20population,well%20as%20parts%20of%20Australia
[3] The Royal Society of Forest and Bird Inc. – Best Fish Guide (2017) https://www.forestandbird.org.nz/sites/default/files/2018-05/Best%20Fish%20Guide%20-%20Pocket%20Guide.pdf

6. Forest & Bird actively supported the roll-out of digital monitoring and was a member of the Digital Monitoring Implementation Advisory Group established by the Ministry of Primary Industries (MPI).

7. Forest & Bird challenged a decision by the Minister of Fisheries in 2019 advocating for overfished stocks needing to be rebuilt within a period that is based on the stock's biology and environmental conditions. After five years of legal proceedings, the Supreme Court ultimately upheld Forest & Bird's core challenge.

8. Forest & Bird have been actively involved in the South East Marine Protection Forum (SEMPA), providing a representative on the forum to consider and recommend marine protection options for the southeast coastal region, culminating in the establishment of a network of marine reserves and protected areas. Forest & Bird supported the Ministers decision to establish six new marine reserves announced late 2023 and continue to advocate for these through the current judicial review process.

9. Forest & Bird are calling for 30% marine protection, a plan of action to reduce sedimentation entering the marine environment and an end to bottom trawling in the Hauraki Gulf through our Arohatia Tīkapa Moana/Love the Gulf campaign. We supported the Hauraki Gulf Protection Bill and continue to be involved with the Hauraki Gulf Forum[4].

10. Fisheries New Zealand (FNZ) claim that the proposed amendments to the Fisheries Act will enhance value to fishers and better ensure sustainability by:
    - improving the responsiveness, efficiency, and certainty of decision-making
    - providing greater protection for on-board camera footage and ensure the on-board camera program is workable
    - implementing new rules for commercial fishers that set out when QMS (Quota Management System) fish must be landed and when they can be returned to the sea.

11. Forest & Bird do not agree that the proposed amendments will better ensure sustainability and believe that it is a backwards step towards EBFM. It will also result in decreased transparency of the fishing industry and potentially increase non-target species bycatch.

[4] The Royal Society of Forest and Bird Inc. – Arohatia Tīkapa Moana | Love the Gulf
https://www.forestandbird.org.nz/campaigns/arohatia-tikapa-moana-love-gulf

Forest & Bird
TE REO O TE TAIAO | Giving Nature a Voice

**FISHERIES REGULATION IN AOTEAROA NEW ZEALAND**

12. The Fisheries Act 1996 is the primary legislation governing fisheries management in Aotearoa New Zealand and aims to provide for the utilisation of fisheries resources while ensuring sustainability by maintaining the potential of fisheries resources to meet the reasonably foreseeable needs of future generations; and avoiding, remedying, or mitigating any adverse effects of fishing on the aquatic environment (Part 2, sec 8).

13. The Resource Management Act 1991 (RMA) plays a significant role in controlling activities that could affect fish populations, marine habitats, and the overall health of aquatic ecosystems. The RMA controls such activities by regulating the environmental effects of development, land use, and resource extraction on aquatic ecosystems. While it does not directly regulate fishing, it ensures that activities affecting coastal environments are managed sustainably. The RMA and Fisheries Act work together to protect fish populations: the RMA controls the environmental aspects of habitat quality, and the Fisheries Act manages the sustainable harvest of fish.

14. The purpose of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012 is to 'promote the sustainable management of the natural resources of the exclusive economic zone and the continental shelf' (10(1)(a)). The Act has a part to play by regulating activities that may affect the marine food chain, impacting fish stocks indirectly through changes in ecosystem dynamics. Although the Act does not have a mechanism to control fisheries directly, it does work in tandem with the Fisheries Act ensure that fishing-related activities are carried out within a sustainable environmental framework by regulating the activities that occur in the same marine environment where fisheries operate.

15. Te Mana o te Taiao – Aotearoa New Zealand Biodiversity Strategy 2020 (ANZBS) is New Zealand's national strategy for the purpose of complying with our requirements under the Convention on Biological Diversity (CBD). New Zealand is required to report to the CBD on its implementation of the ANZBS. The ANZBS sets several goals which are particularly relevant to fisheries management and this consultation specifically. These relevant goals are listed in Appendix One.

16. New Zealand is a party of the United Nations Convention on the Law of the Sea (UNCLOS). New Zealand ratified UNCLOS in 1996, becoming a party to this international treaty, which came into force in 1994. The Convention is a comprehensive framework that governs the rights and responsibilities of nations regarding the use and conservation of the world's oceans and marine resources. UNCLOS establishes the obligation for New Zealand to protect and preserve its marine environment, including measures to protect marine biodiversity through UNCLOS Articles 61-64 which focus on the conservation and management of living marine resources

within the Exclusive Economic Zone (EEZ) and the cooperation required for shared fish stocks and migratory species[5]. These articles are listed in Appendix Two.

17. New Zealand also has fisheries obligations under the NZ-EU Free Trade Agreement (EUFTA). These include sustainability commitments such as maintaining sustainable fisheries management based on science and the ecosystem approach and sharing information about conservation measures[6].

## COMMENTS ON THE FISHERIES CONSULTATION DOCUMENT

### PART ONE: PART 1: PROPOSALS TO IMPROVE RESPONSIVENESS, EFFICIENCY AND CERTAINTY OF DECISION MAKING

18. Multi-year Catch Decisions

    i. Due to the proposed inability to review catch limits within the five-year timeframe (unless there is an 'emergency'), there is considerable concern of the inability to adapt management if fish stocks begin to fail, taking into consideration new scientific data and/or responding to environmental changes.

    ii. This multi-year approach contradicts EBFM, which FNZ have been advancing and promoting. This move away from EBFM neglects New Zealand's requirements under UNCLOS (specifically Article 61) and is also contradictory to RMA Section 5 - sustainable management of natural and physical resources.

    iii. Forest & Bird is concerned that the proposal to allow the Minister to set catch limits for up to five years without annual review or public consultation shuts out e-NGOs, experts and the public. This is a continuation of the current trend of anti-democratic decision-making by excluding anyone but the Minister from these processes.

19. Management procedures

    i. Removing the consultation step and giving the Minister full discretion on what these management procedures could be and contain in the name of 'efficiency and improving

[5] United Nations Convention on the Law of the Sea https://www.un.org/depts/los/convention_agreements/texts/unclos/unclos_e.pdf

[6] EU-New Zealand: Text of the agreement: https://policy.trade.ec.europa.eu/eu-trade-relationships-country-and-region/countries-and-regions/new-zealand/eu-new-zealand-agreement/text-agreement_en?utm_source=chatgpt.com

processes' is anti-democratic. It refuses to acknowledge the important role that the public must play in decision-making.

ii. The opportunity for 'stakeholders' to 'proactively input' into how and when catch limits could be adjusted for a particular stock, opens the door for control of catch limits set by the commercial fishing industry and allow fish stocks to be exploited beyond recovery.

20. Low information stocks

i. There cannot be a 'sustainable utilisation of fish stocks' where there is low information, as by its nature, there is not enough data to inform what a sustainable catch level is.

ii. If there is low or no information of a fish stock, this species should have a commercial catch limit of zero until such a time that there is sufficient information available to make an informed decision on what a sustainable level of catch would be.

21. Better integrate social, cultural, and economic factors when deciding a rebuild period

i. The proposal to amend sections 13 and 14 to require the Minister to have regard to biological characteristics, environmental conditions, interdependence of stocks, and any social, cultural and economic factors the Minister considers relevant, when setting a catch limits is a fundamental departure from the current law. The current law already requires those matters to be considered when setting a catch limit, but with an additional sustainability backstop: that overfished stocks must be rebuilt within a period that is scientifically and environmentally appropriate for that stock.

ii. Forest & Bird does not agree with the problem/issue and does not support the proposal.

iii. Forest & Bird would define a "a period appropriate to a stock" based on biological characteristics of the stock and environmental considerations by considering:
   a) The stock's biological rebuild capability; and
   b) The need to rebuild the stock's age structure as well as its biomass; and
   c) The impacts of the stock's overfished status on the wider ecosystem; and
   d) Predicted environmental conditions and the stock's vulnerability to those conditions, to derive a period within which the stock could sustainably rebuild (noting best practice in New Zealand and internationally is that this should not exceed 2x the minimum possible rebuild period without fishing).

iv. Social, cultural and economic considerations could then be considered in determining whether to set a Total Allowable Catch (TAC) that would result in the stock rebuilding over the maximum "appropriate period", or whether a shorter period is appropriate.

v. "Social, cultural and economic factors" include impacts on commercial fishers of catch reductions, and that factor has by far the largest impact on rebuild periods (longer rebuild periods = higher TAC = less impact on commercial fishers). The effect of this proposal is to reduce catch reductions and delay the stocks rebuild to Maximum Sustainable Yield (MSY), so that commercial fishers can keep catching more fish from overfished stocks.

vi. This issue was the subject of decisions from the High Court, Court of Appeal and Supreme Court, all of which held that when fish stocks have been overfished to the point that they are below their MSY, they must be rebuilt within a period appropriate to the stock. Periods appropriate to the stock must be assessed by reference to the stock's biological characteristics and environmental conditions[7]. That does not mean that social, cultural and economic considerations are irrelevant, it simply means that those considerations cannot result in a rebuild period that would be longer than the period that is scientifically and environmentally appropriate for the overfished stock: they cannot be relied on to set an unsustainable rebuild period.

vii. In those court cases, Seafood NZ argued for an interpretation of the Fisheries Act that aligns with the proposal in the Discussion Document (the Minister of Fisheries did not). The Supreme Court described Seafood NZ as attempting to relegate the appropriate recovery period "to a mere mandatory relevant consideration in TAC decisions"[8]. Having lost on this point in Court three times, the fishing industry is again attempting to make the scientific and environmentally appropriate period just one consideration, alongside economic factors, in rebuilding overfished stocks. The result, if this change is made law, will be that it is entirely lawful to set unsustainable rebuild periods.

viii. The fishing industry's motivation for this law change is that it has little influence over FNZ's scientists' advice on what is a scientifically sustainable rebuild period. If rebuild periods are set by reference to social, cultural and economic factors, the fishing industry is better placed to advocate for long rebuild periods and, consequently, higher TACs. The outcome is a fish stock that is held at a very low level for longer, making the stock more vulnerable to sharp decline if unpredictable environmental changes are experienced, and reducing the species' ability to have a role in the wider ecosystem. An example of this is in the Hauraki Gulf, where overfishing has resulted in fewer snapper

[7] *Seafood New Zealand Ltd v Royal Forest & Bird Protection Society of New Zealand Inc* [2024] NZSC 111 at [145].
[8] At [145]

and crayfish which predate on kina, kina then predate on kelp reducing their abundance and a kina barren is established, leading to ultimate ecosystem collapse.

ix. That outcome is inconsistent with the purpose of the Fisheries Act. The purpose of the Act is to **provide for** utilisation of fisheries resources while **ensuring** sustainability[9]. This means that *"... in the attribution of due weight to each policy, [the weight] given to utilisation must not be such as to jeopardise sustainability. Fisheries are to be utilised, but sustainability is to be ensured."*[10] A TAC is set for the purpose of ensuring sustainability[11]. Where a stock is below its MSY, it has been utilised beyond a sustainable level. Returning the stock to a sustainable level within a scientifically and environmentally appropriate period, rather than a period arrived at based on economic considerations, aligns with the purpose of the Act.

x. It is also contrary to and with FNZ policy (based on international best practice) that overfished stocks should be subject to a "formal, **time-constrained** rebuilding plan"[12].

xi. The Discussion Document claims that the way in which the Fisheries Act currently allows for social, cultural and economic factors to be taken into account is difficult to implement and gives three reasons why this is so (at 112).

xii. It is apparent that these reasons were provided by representatives of the fishing industry, because they mirror the legal submissions presented by Seafood NZ to the High Court, Court of Appeal and Supreme Court (which were rejected by all three courts). The reasons in the Discussion Document do not align with the position taken by FNZ, so clearly have not been written by FNZ or its legal advisors. For anyone who has read the Supreme Court's decision, these reasons are simplistic, illogical, and easily refuted.

a) The first reason given is that the Fisheries Act "requires the Minister to first determine the way and rate a stock rebuilds and then consider an appropriate period over which a stock rebuilds", but that "for the provisions to work in combination, as intended, it is more practical to consider a period of rebuild appropriate to the stock, and then consider the way and rate the stock rebuilds within that appropriate period".

[9] Section 8(1)
[10] *New Zealand Recreational Fishing Council Inc v Sanford Ltd* [2009] NZSC 54
[11] Sections 2(1) and 11(3)(a)
[12] Harvest Strategy Standard. Fisheries NZ describes this Standards as representing "international best practice" (see *Royal Forest and Bird Protection Society of New Zealand Inc v Minister of Fisheries* [2021] NZHC 1427 at [148])

That is wrong. The Fisheries Act does not require the Minister to first determine the way and rate a stock rebuilds and then consider an appropriate period of rebuild. In interpreting s 13, the Supreme Court said[13]:

> *We think it is immaterial whether the rebuild period is set first or used to check, and if necessary change, the period that results from a proposed TAC decision, so long as the final decision adopts a period that is appropriate to the stock's biological characteristics and environmental conditions and the way and rate will result in the stock returning to BMSY in that period.*

b) The second reason is that "From a scientific and fisheries management perspective, it is difficult to determine a range of appropriate periods for the rebuild of a stock based on consideration of biological factors alone. In practice, the fastest a stock can increase in abundance is when all factors impacting on the stock, including fishing, is stopped. However, this would impose an unnecessary constraint on use in many cases."

The assertion that it is difficult to determine an appropriate rebuild period based on scientific/biological considerations is wrong. FNZ scientists do not consider this difficult and have competently recommended scientifically determined rebuild periods since 2021[14]. The scientifically appropriate rebuild period does not require all fishing to stop. No rebuild periods requiring closure of the fishery have been adopted since the tarakihi court decisions (other than for species below the "hard limit" (e.g. scallops) where pre-existing policy directs closure). For example, in 2022 FNZ recommended that any rebuild period between 5 and 19.7 years would be scientifically appropriate for tarakihi[15], and the Minister then chose a period of 15 years[16], taking social, cultural and economic factors into account to choose that period from within the range. If closing the stock would impose an unnecessary constraint on use, there is no need to close the stock. The Supreme Court clarified that this is how the existing law works:

> *[99] … unless the fishery is so severely depleted that it must be closed, there may be no single period that must be adopted. Rather, the Minister must select a recovery period that is appropriate to the stock, having regard to the stock's biological characteristics and environmental conditions. Where there is more than one appropriate recovery period, the legislation does not require that the Minister select the shortest of them.*

[13] At [110]
[14] Following release of the High Court tarakihi decision.
[15] Review of East Coast Tarakihi Sustainability Measures for 2022/23
[16] The minister's decision letter - changes to fisheries sustainability measures for the 2022 October round

> *[100] Social, cultural and economic considerations must be taken into account, to the extent the Minister thinks them relevant, when making way and rate decisions. If they are taken into account there, it necessarily follows … that they also affect the rebuild period. The legislation reconciles that characteristic of TAC decisions with the limit in subs (2)(b)(ii) by permitting the Minister to take social, cultural and economic considerations into account when selecting among recovery* periods all of which are appropriate to the stock.

c) The third reason is that "way and rate and appropriate rebuild period are different ways of achieving the same thing. It is unclear whether both are required to achieve the desired outcome of a stock rebuild within an acceptable timeframe." For the reasons set out above, that is wrong. The relationship between the rebuild period and the way and rate of rebuild are clear; Seafood NZ simply does not like the relationship as described by the Supreme Court, because it means Seafood NZ has less power to advocate for higher TACs for overfished stocks. Changing section 13 will simply overturn the clarity of the Supreme Court's decision and result in uncertainty, more litigation, and unsustainable fisheries decisions.

xiii. The next rationale in the Discussion Document is that "Internationally, the requirement for decision-makers to consider a range of options that include different ways of rebuilding depleted stocks based on biological and socio-economic considerations is commonly recognised". This is yet another way of saying that economic considerations should be able to extend a rebuild out beyond the period that is environmentally and biologically sustainable. Internationally, a range of approaches are taken, with varying degrees of success in maintaining a sustainable fishery[17]:

a) Canada requires rebuilding plans to be in place for stocks that are in the "Critical Zone" (i.e. New Zealand's "soft limit"), with the aim of having a high probability of the stock growing out of the Critical Zone within a reasonable timeframe. Canada has used 1.5-2 generations as a rebuilding timeframe since 2009.
b) For stocks below MSY, the Marine Stewardship Council Fisheries Standard requires evidence of stock rebuilding within a specified timeframe, which is the shorter of either 20 years or twice the generation time.
c) In the United States of America (the US) the Magnuson-Stevens Fishery Conservation and Management Act 2007 specifies that the rebuild period must not exceed 10 years, except where biology of the stock, other environmental

[17] Review of East Coast Tarakihi Sustainability Measures for 2022/23

conditions, or management measures under an international agreement to which the US participates, dictate otherwise.

xiv. In contrast, the 2019 tarakihi TAC decision, which wrongly failed to consider what period would be appropriate to the stock based on biological and environmental characteristics and instead relied on social, cultural and economic considerations, would have resulted in a rebuild period of more than 30 years[18]. This is far longer than the periods set internationally, and far longer than the maximum 19.7 years that FNZ subsequently assessed as the maximum appropriate rebuild period. There is a huge uncertainty range associated with predicting rebuilds so far into the future.

xv. The Discussion Document goes on to say: "The current wording in the Fisheries Act does not fully reflect this inherent trade-off between level of use and period of rebuild in determining an appropriate level of sustainable utilisation." This assumes a trade-off is appropriate, which is wrong. The Fisheries Act allows fish stocks to be utilised but requires that sustainability is ensured. The current wording of s 13 better reflects the purpose of the Act than the proposed changes. Put simply: if social, cultural and economic considerations are part of deciding the rebuild period, the period chosen is likely to be longer than the period that is scientifically appropriate for the stock.

xvi. The Discussion document says that the proposed changes would reflect historic (pre-2021) practice. It is irrational to seek to revert to a rebuild approach that is unsustainable, contrary to the purpose of the Act, and not considered necessary by FNZ. The Discussion Document identifies that a range of stocks have been successfully rebuilt under the pre-2021 approach (four stocks are named). This is very selective reporting. FNZ has determined that of 152 quota stocks scientifically evaluated[19], 43 are below the MSY-compatible level and 19 of those are below the soft limit[20]. For those 43 stocks, and particularly those beyond the soft limit for which a "time-constrained rebuild plan" has been required since at least 2008[21], the pre-2021 approach to rebuilding has not resulted in stock being rebuilt to MSY as required by the Act.

xvii. The Discussion Document says that: "The Minister would need to meet the obligations under the Fisheries Act to ensure sustainability and take into account the information principles (including precaution) and environmental principles. This would ensure that decisions do not give inappropriate weight to social, cultural, and economic factors

[18] Affidavit of Mark Griffith (Principal Advisor, Fisheries Science for Fisheries NZ) for judicial review of 2019 tarakihi TAC decision, at 31.1.
[19] Excluding 293 nominal stocks excluded because they collectively account for only 0.04% of the catch.
[20] The population status of NZ fish stocks | NZ Government (2023)
[21] The Harvest Strategy Standard was introduced in October 2008.

relative to biological factors when setting the catch limit." This is illogical and legally incorrect:
The current approach to the rebuild period, based on environmental and biological considerations, aligns with the requirement to ensure sustainability. Moving away from that approach does not.

xviii. Statutory purpose statements are not operative decision-making criteria. An Act's purpose is implemented through the Act's more specific provisions, in this case sections 13 and 14. In New Zealand Recreational Fishing Council, the Supreme Court rejected an argument that section 8 (purpose) controls how the Minister determines catch limits, on the orthodox basis that[22]:

> *[59] … this is not … the role of s 8 in the scheme of the Act. … the Minister must "bear in mind and conform with the purposes of the legislation". But subject to this constraint, the nature and scope of the Minister's powers and the restrictions on them are as is provided for in the operating provisions of the Act.*

*xix.* A generalised obligation for the Minister to make decisions in accordance with the Act's purpose and the requirement to take into account information and environmental principles will not prevent inappropriately long rebuild periods being set based on claimed impacts on commercial fishers.

*xx.* As well as the reasons explained above, the proposal is also contradictory to Article 61 of the UNCLOS (should determine the allowable catch based on scientific data) and adverse to the goals set out in ANZBS.

22. Recognition of non-regulatory sustainability measures

i. Non-regulatory (voluntary) measures are unenforceable and create uncertainty.

ii. Voluntary measures are often not science-informed and due to their voluntary nature, could be used sporadically and create inconsistencies across fisheries and quota holders.

iii. Voluntary measures require strong leadership and often external support (funding, training, monitoring etc.).

iv. Voluntary measures should be encouraged but should not be relied on to influence decisions on catch limits or other sustainability measures (in other words, they should not replace regulatory measures).

[22] New Zealand Recreational Fishing Council Inc And Anor v Sanford Limited And Ors Sc 40/2008 At [59]

23. Differential ACE carry forward

i. If multiple fishers save Annual Catch Entitlement (ACE) and carry it forward, large amounts of catch can accumulate. This could lead to excessive fishing pressure in a single season, damaging fish stocks with some species not being able to recover quickly enough.

ii. The QMS is designed to set Total Allowable Commercial Catch (TACC) based on stock assessments. Carrying forward ACE can distort these catch limits, making it harder for FNZ to regulate stocks properly.

iii. If a higher-than-expected catch happens due to carry forward, it can disrupt the food web with predator/prey relationships possibly affected, impacting the wider marine ecosystem.

iv. Fishing pressure on habitats and bycatch species may increase unpredictably.

24. Carry forward of ACE for rock lobster stocks

i. Forest & Bird do not agree that any uncaught rock lobster stock should be able to be carried forward to the following year and consider that rock lobster should remain a Schedule 5A stock.

ii. New Zealand's rock lobster populations have experienced declines in certain areas, with fishing identified as a significant contributing factor. A notable example of this is the CRA 2 fishery which faced substantial reductions in rock lobster numbers.
In response to these declines, a 60% reduction in the TACC for CRA 2 in 2018 was implemented to facilitate stock recovery.

iii. Rock lobster are a predator of kina and therefore contribute to the reduction of kina barrens and restoration of kelp forests[23].

iv. As above for differential ACE carry forward, carrying forward ACE can distort TACC, making it harder for FNZ to regulate stocks properly and can distort ecosystems and habitats.

25. Increasing the threshold for suspension of fishing permit for non-payment of deemed value

[23] Fisheries New Zealand (2024) Discussion of proposed measures for the Northland spiny rock lobster fishery (CRA 1) https://www.mpi.govt.nz/dmsdocument/66006

i. No comment.

**PART TWO: GREATER PROTECTION FOR ON-BOARD CAMERA FOOTAGE AND ENSURING THE ON-BOARD CAMERA PROGRAMME IS WORKABLE**

26. Camera footage protections for on-board cameras

i. Forest & Bird considers that camera footage from on-board cameras should remain subject to the Official Information Act 1982 (OIA). There are robust protections for privacy and commercial sensitivity in both the OIA and the Privacy Act 2020. This was well canvassed by MPI during the design of the digital monitoring program and a very restrictive OIA regime put in place.

ii. The cabinet paper supporting the proposal states:

> *"Cameras capture all activity within their set field of view, and footage captured could include personal as well as commercially sensitive information, or footage of lawful fishing operations such as unintentional catch of protected species. I am concerned that if this kind of footage is released under the OIA, it could be used to negatively impact on fishers and their companies, and the image of the industry both domestically and abroad. This risks eroding levels of willing compliance with that camera program."*

These comments in the Cabinet paper raise two very concerning issues, which are addressed below:

a) Compliance with the digital monitoring program is compulsory and enforceable. If the Minister and MPI have reason to believe that fishers intend to be non-compliant with the digital monitoring program, then those fishers should in the first instance be reminded of their obligations to comply with the program, then in the second instance be prosecuted for breaching the legal obligations. Seeking a reduction in transparency by threatening non-compliance is unacceptable conduct for a responsible industry.

b) The Cabinet paper outlines three objections to the potential release of information, two of which are already addressed by existing legislation and one of which is not a legitimate reason for withholding information from the public. The two issues that are addressed by existing legislation are personal privacy and commercial sensitivity. The issue not addressed through existing legislation is the public embarrassment and brand risk caused by the release of footage of dead dolphins and other bycatch.

iii. According to information provided by MPI under the OIA, since the wider roll out of on-board cameras on commercial fishing vessels in 2023, FNZ has received fifteen OIA requests for commercial fishing vessel on-board camera footage. Ten OIA requests were from environmental interest groups and media. Five requests were from individual commercial fishing operators requesting the release of footage from their own vessels. Ten OIA requests were withheld in full but commercial fishers were provided with footage of activity on their own vessels. Most of these requests were declined on the grounds of commercial sensitivity or protecting the maintenance of the law. A small number of requests were released to fishers whose activity was in the camera footage. There have been no complaints upheld by the Ombudsman that information was improperly released in breach of requirements of commercial sensitivity or privacy.

iv. Considering the evidence from decisions on OIA requests, the lack of any complaints about breaches of privacy and commercial sensitivity, and MPI's assurances to Forest & Bird that it takes its legal obligations under the Privacy Act and OIA seriously, there is no public policy grounds for concern. Furthermore, were MPI to in future not meet its obligations under the OIA and Privacy Act, then the solution would be to directly address the failure of MPI to meet its core functions as a public agency. The data shows that MPI is exceedingly cautious over releasing information.

v. This leaves only one reason for the proposed exemption of camera footage from the OIA, which is the risk to fishing sector reputations from footage of illegal behaviour, legal but socially unacceptable behaviour and/or fishing impacts. Exempting camera footage from the OIA to prevent the public from viewing socially unacceptable fishing events is not a legitimate public policy approach and is likely to significantly undermine public confidence in the fishing industry. Put simply, if the industry does not want the public to see footage of dead dolphins, because catching dolphins is socially unacceptable, then the solution is to stop catching dolphins.

vi. At a practical level, changing the law to prevent customers and stakeholders seeing the consequences of socially unacceptable fishing practices is largely pointless because of the amount of file footage that is presently available to media and stakeholders; one dolphin capture looks much like another. Stakeholders and media are likely to simply use file footage and state that they are doing this because the industry and government don't want customers to see the reality of what is happening on the water.

27. Amendments to the scope of on-board cameras

i. Forest & Bird does not support the proposed exemption for bottom longline vessels longer than 32 metres. MPI has proposed this based on partial observer coverage in

bottom long line fisheries. This misunderstands a core purpose of cameras, which is to verify logbooks and thereby prevent misreporting.

ii. MPI data (see attached briefing paper in Appendix Three) shows that vessels with observers on board are significantly more likely to report bycatch than those without observation; prior to the introduction of cameras inshore fleet fishing trips were between 5 and 9.5 times more likely to report bycatch if there were observers on board. In the deepwater fleet, trips were between 2.5 and 3.5 more likely to report bycatch if observers were on board. MPI previously reported a similar discrepancy in the highly migratory fishery fleet, indicating that this is a general trend.

iii. Where cameras have been rolled out in New Zealand and overseas a significant jump in reporting of bycatch and discarding has occurred. Accordingly, all vessels that are large enough to support cameras should have cameras, and in the interim all bottom long line vessels should have cameras unless the fleet has 100% observer coverage.

iv. Forest & Bird asked MPI how compliance will be achieved for bottom long line vessels that have neither observers nor cameras. MPI's response was that "statistical data from observed vs non observed trips will be used to assess if misreporting is occurring." This approach will reveal if misreporting is likely to be occurring, and that compliance action might be needed, but will not confirm whether offences are occurring or not, and who is committing those offences. Effective compliance will require observers or cameras (or both).

v. Forest & Bird considers that the only situations where cameras could be exempt are where:
    a) The fishing method makes the use of cameras irrelevant (such as diving)
    b) Temporary exemptions via regulation where the vessel is too small for current technology and there is a demonstrably effective alternative system of ensuring compliance with the Fisheries Act
    c) The vessel has a human observer on board. Forest & Bird's preference is for both observers and cameras on vessels as it improves safety for observers, who cannot be pressured to not report if cameras are recording fishing effort.

vi. The system of graduated penalties that has been introduced into the fisheries system was based on a shift from a low chance of detecting offences to a high chance to detecting offences with cameras. The logic behind the previous offences regime was that the chance of detecting offences was low and as a result the penalties needed to be high to act as a deterrent (particularly given that offences in the commercial fisheries sector are largely motivated by economics and so susceptible to cost/benefit analysis

by fishing companies). Exempting fishers from the transparency provided by cameras, while enabling them to benefit from a graduated regime, risks creating an incentive to commit financially valuable offences by changing the cost/benefit analysis for firms. Any amendment bill should require that vessels without observation (i.e. no cameras or observers) should be subject to the pre-graduated penalties regime.

28. Clarifying camera use requirements

i. Given the economic incentives for fishers to discard fish and the risk of discarding during transporting vessels to port, Forest & Bird's preference is for port-to-port operation of cameras unless MPI can demonstrate an alternative system with equivalent effective compliance.

**PART 3: IMPLEMENTING NEW RULES FOR COMMERCIAL FISHERS THAT SET OUT WHEN QMS FISH MUST BE LANDED AND WHEN THEY CAN BE RETURNED TO THE SEA**

29. Monitored returns

i. The proposal makes it easier to discard fish at sea. This matched with the proposed camera changes are very concerning and will most likely lead to an increase in discards (which have already increased substantially in reporting due to the on-board camera rollout) and bycatch of non-target species including protected species.

30. Other proposed amendments to the landing and discard rules

i. The consultation document does not provide any details on the monitoring of the proposed amendments to record fish survival.

ii. Discards must be effectively monitored with proactive steps taken to reduce bycatch of non-target and protected species.

Thank you for consideration of our submission.

Richard Capie
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The Royal Forest and Bird Society of New Zealand Incorporated

**APPENDIX ONE**

Te Mana o te Taiao – Aotearoa New Zealand Biodiversity Strategy 2020 (ANZBS) fisheries relevant goals[24]:

2025 goals -

iii. **10.1.1** - Prioritised research is improving baseline information and knowledge of species and ecosystems.
iv. **10.2.1** - The cumulative effects of pressures on biodiversity are better understood.
v. **10.5.1** - A framework has been established to promote ecosystem-based management, protect and enhance the health of marine and coastal ecosystems, and manage them within clear environmental limits.
vi. **10.6.1** - A protection standard for coastal and marine ecosystems established and implementation underway.
vii. **10.7.1** - There have been no known human-driven extinctions of indigenous species.
viii. **12.1.1** - Environmental limits for the sustainable use of resources from marine ecosystems have been agreed on and are being implemented.
ix. **12.2.1** - The number of fishing-related deaths of protected marine species is decreasing towards zero for all species.
x. **12.4.1** - The potential for different sectors to contribute to improved indigenous biodiversity is understood, and sustainable use practices that include benefits for indigenous biodiversity are becoming more widespread.
xi. **13.3.1** - Potential impacts from climate change have been integrated into ecosystem and species management plans and strategies, and a research and rangahau strategy has been developed to increase knowledge and understanding of climate change effects.

2030 goals -

xii. **10.1.2** - Improved baseline information, comprehensive mapping, and improved knowledge of species and ecosystems and causes of their decline are informing management.
xiii. **10.2.2** - Management at different scales and across domains is reducing the cumulative effects of pressures on biodiversity.
xiv. **10.4.2** - No loss of the extent or condition marine and coastal habitats which have been identified, mapped and designated as having high biodiversity value.
xv. **10.5.2** - Significant progress has been made in protecting marine habitats and ecosystems of high biodiversity value.

[24] Te Mana O Te Taiao, Aotearoa New Zealand Biodiversity Strategy 2020: https://www.doc.govt.nz/globalassets/documents/conservation/biodiversity/anzbs-2020.pdf

xvi. **10.6.2** - Significant progress made in establishing an effective network of marine protected areas and other protection tools.
xvii. **10.7.2** - Populations of all indigenous species known to be at risk of extinction are being managed to ensure their future stability or an improving state.
xviii. **12.1.2** - Marine fisheries are being managed within sustainable limits using an ecosystem-based approach.
xix. **12.2.2** - The direct effects of fishing do not threaten protected marine species populations or their recovery.
xx. **12.4.2** - Sustainable use practices that include benefits for indigenous biodiversity are standard practice for biodiversity resource users (including tourism and recreation) and primary industry (including agriculture, forestry, fisheries, aquaculture and horticulture).

2050 goals -

xxi. **10.1.3** - Comprehensive baseline information integrated with spatial information and knowledge about effective management is informing the adaptive management of species and ecosystems.
xxii. **10.2.3** - The cumulative effects of pressures on biodiversity have been reduced to a level that does not have significant detrimental effects on biodiversity.
xxiii. **10.4.3** - An interconnected series of marine and coastal ecosystems have been protected and restored to a 'healthy functioning' state and are connected to indigenous land, wetland and freshwater ecosystems.
xxiv. **10.5.3** - (2035) Marine and coastal biodiversity is managed within environmental limits so that there is no net loss in the extent or condition of marine and coastal ecosystems.
xxv. **10.7.3** - Indigenous species have expanded in range, abundance and genetic diversity and are more resilient to pressures, including climate change.
xxvi. **12.1.3** - Marine fisheries resources are abundant, resilient and managed sustainably to preserve ecosystem integrity.
xxvii. **12.2.3** - The mortality of non-target species from marine fisheries has been reduced to zero.
xxviii. **12.4.3** - Sustainable use practices are providing benefits for indigenous biodiversity and maintaining ongoing economic and wellbeing benefits for people.
xxix. **12.5.3** - The connectivity of indigenous ecosystems has been improved through targeted restoration from mountain tops to ocean depths (ki uta ki tai).
xxx. **13.1.3** - Carbon storage from the restoration of indigenous ecosystems, including wetlands, forests, and coastal and marine ecosystems (blue carbon), is a key contributor to achieving net zero emissions for Aotearoa New Zealand.

**APPENDIX TWO**

United Nations Convention on the Law of the Sea (UNCLOS) Articles 61-64[25].

Article 61 – Conservation of Living Resources

- Coastal states must ensure sustainable fishing practices and prevent over-exploitation.
- They should determine the allowable catch based on scientific data.
- Measures should be taken to restore and maintain fish populations.
- Special attention is given to dependent species and ecosystems when managing fisheries.

Article 62 – Utilization of Living Resources

- Coastal states should promote the optimal use of their EEZ's living resources.
- If a country cannot harvest all its allowable catch, it may grant access to other nations under regulations.
- Foreign fishing must comply with domestic laws regarding conservation, licensing, quotas, and enforcement.
- Coastal states can set conditions on how foreign vessels operate within their EEZ.

Article 63 – Shared Fish Stocks

- If a fish stock straddles the EEZ of two or more states or extends into the high seas, those states must cooperate to ensure sustainable management.
- Agreements should be based on scientific research and fair resource allocation.

Article 64 – Highly Migratory Species

- Coastal states and other nations must work together to manage highly migratory species (e.g., tuna, sharks).
- This cooperation is often through regional fisheries management organizations (RFMOs), such as:
    - Western and Central Pacific Fisheries Commission (WCPFC) (for tuna in the Pacific)
    - Commission for the Conservation of Southern Bluefin Tuna (CCSBT)

[25] United Nations Convention on the Law of the Sea https://www.un.org/depts/los/convention_agreements/texts/unclos/unclos_e.pdf

**APPENDIX THREE**

Data on bycatch reporting with and without observers – Forest & Bird briefing to the Minister of Oceans and Fisheries (2021):

# Seabird bycatch misreporting

## BRIEFING TO THE MINISTER OF OCEANS AND FISHERIES

May 2021

Contact


| | |
|---|---|
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## Seabird bycatch misreporting

### Summary

Fishers are legally required under the Fisheries Act to report "incidental" catch of protected wildlife such as seabirds, marine mammals, turtles, some sharks and corals in logbooks. Falsifying logbooks is a significant offence, and the fisheries management system relies on accurate reporting. In New Zealand logbooks are insufficiently reliable for fisher's bycatch reporting to be used and instead the Government uses estimates calculated from official observer records.

Australia placed cameras on long line commercial fishing boats in 2015. This generated a significant improvement in bycatch and fish discard reporting with up to seven times the amount of bycatch reported once fishers knew that their catch would be observed.

Forest & Bird has obtained data comparing estimates derived from observer-reported bycatch with fisher reported bycatch, and data comparing the proportion of fishing trips reporting bycatch in the presence and absence of observers. Both sets of data reveal significant discrepancies that can only be explained by high levels of misreporting.

From the 2013/14 fishing year to the 2017/18 fishing year fishers:

- The bottom-long line fishery reported catching between 10% and 14% of the estimated numbers of seabirds caught in the fishery
- The surface long-line fishery reported catching between 13% and 36% of the estimated numbers of seabirds caught in the fishery
- The trawl fishery reported between 45% and 54% of the estimated number of seabirds caught in the fishery
- It appears the set net fishery reported catching at between 2% and 14% of estimated rate of captures of seabirds in the fishery. The level of observer coverage of the fishery was too low for population estimates.

For the 2016/17 fishing year to the 2018/19 fishing year vessels in the inshore fleet were between five and nine times more likely to report catching seabirds if an observer was on board and the deep-water fleet was between two and a half and three and half times more likely to report catching seabirds in an observer was on board.

This level of likely misreporting is a risk to the integrity of the fisheries management system and a key reason why cameras on commercial fishing vessels are needed.

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## Recommendation

Forest & Bird asks that you note

- Commercial fishers must accurately report bycatch under the Fisheries Act 1993 and associated regulations.
- Comparing fisher-reported bycatch against accepted estimates of likely bycatch reveals that significant under-reporting is highly likely in the trawl, bottom long-line and surface long-line fisheries.
- Extrapolation of observed bycatch rates in the set net fishery suggests bycatch is largely unreported in the set net fishery.
- Comparison of fishing trips with and without observers reveals that commercial fishers are up to nine times more likely to report bycatch when there are observers
- This level of misreporting is a serious risk to the integrity of the fisheries management system.

## Background

The Government is making a decision on the installation of cameras on commercial fishing vessels. This is a manifesto commitment of the Labour Party. Forest & Bird has long advocated the roll-out of cameras on commercial fishing vessels to improve transparency and compliance. Forest & Bird is a member of the Ministry of Primary Industries' Implementation Advisory Group on Digital Monitoring.

Since receiving information that showed fisher reports of catching hoiho primarily were coming from vessels with Government observers, Forest & Bird took a closer look at levels of misreporting in the commercial fishing industry. There is no penalty for catching protected species such as seabirds, but it is an offence to fail to report catching them.

Misreporting of seabird bycatch is a warning sign that larger scale significant misreporting of fish discarding is likely as, unlike seabird captures, illegal discarding carries significant penalties.

In Australia the introduction of cameras on some vessels resulted in a significant jump in the level of reported bycatch as fishers became more honest in their reporting. A study undertaken by the Australian Ministry of Agriculture showed reporting of captured sea mammals and birds was nearly eight times higher on longline fishing ships after monitoring cameras were installed in 2015. This indicated significant misreporting prior to the introduction of cameras.

Forest & Bird compared the Government's accepted estimates of bycatch against fisher reported bycatch for the entire New Zealand surface long-line, bottom long-line, trawl, purse seine and set net fisheries to gain an estimate

of the level of likely misreporting of seabird bycatch. Forest & Bird has compared the proportion of trips that fishers reported bycatch in the presence and absence of Government observers.

## The data

In 2019 Forest and Bird sought from MPI, for the years 2013/14 to 2017/18, the aggregated commercial fisher reported protected species bycatch for each of the following fisheries: surface long line; bottom long line; trawl; purse seine; set net. The purse seine data was discarded because bycatch rates were so low that comparisons were not possible.

This information was sought in a form as it would enable a direct comparison to be made with the Government's accepted estimates of bycatch as per the DragonFly website. MPI cooperated fully with the request and the data arrived in early January 2020.

In 2020 Forest & Bird sought further information from MPI for the fishing years 2016/17 through to 2018/19. This second batch of data provided data on the proportion of observed commercial fishing trips in the deep-water and inshore fisheries that were reporting bycatch and the proportion of unobserved commercial fishing trips that were reporting bycatch. The data was not sought for the highly migratory species fishery as the Government had already published that data.

Forest & Bird appreciates the cooperation it received from MPI in pulling together the data required for this analysis.

## Comparing fisher-reported bycatch and Dragonfly estimates of bycatch

**Bottom long-lining, surface long-lining and trawling**

Forest & Bird compared the aggregated fisher reported bycatch against the Dragonfly Data Science estimates of bycatch for seabirds in the bottom long line, surface long line and trawl fisheries. The results are in the table below. The percentage shown is the number of seabirds reported by fishers divided by the number of seabirds estimated to be caught by the specified fishing method in that year. For example, in 2013/14 the bottom long line fishery reported a number of seabirds caught that was 13% of the actual estimated number of seabirds caught.

**Table 1: Seabird bycatch reporting in the bottom long line, surface long line and trawl fisheries**

| **Likely level of seabird bycatch reporting – bottom long line, surface long line and trawl** | | | |
|---|---|---|---|
| **Year** | **Bottom long line** | **Surface long line** | **Trawl** |
| 2013/14 | 13% | 13% | 45% |
| 2014/15 | 10% | 19% | 54% |
| 2015/16 | 13% | 36% | 54% |
| 2016/17 | 12% | 15% | 52% |
| 2017/18 | 14% | 23% | 47% |
| Observer coverage | 2% - 15% | 13%-31% | 16%-20% |

In no year did reporting of seabird bycatch reach close to the 95% confidence range for estimates of seabirds caught. This means it is extremely unlikely that the difference between the reported bycatch and estimated bycatch can be explained by chance alone.

This large difference between the fisher reported bycatch and Government's accepted estimates of bycatch indicate that:

- The trawl fishery reports around half of the seabirds estimated caught
- The surface long line fishery generally reports less than a third of the seabirds estimated caught
- The bottom long line fishery generally reports less than one in six of the seabirds estimated caught

**Set net fisheries**

The set net fishery posed a problem for analysis because the level of observer coverage is so low it is not possible to reliably estimate the level of bycatch. Anecdotally misreporting is rumoured to be high and statistics on hoiho reporting previously released to Forest & Bird revealed that reporting of hoiho captures came almost exclusively from vessels with observers.

Although it is not possible to provide a reliable population estimate, Dragonfly Data Science does provide a bycatch rate per kilometre of net set. By multiplying this rate by the number of kilometres of net set, a rough estimate of the number of seabirds caught in the set net fishery every year is possible. Forest & Bird compared this rough estimate against the level of commercial set net fisher reporting to get an estimate of the possible level of

misreporting in the set net fishery. Even accounting for the unreliability of the data, this differential is very large.

Table 2: Estimated level of self-reporting in the set net fisheries

| **Set net fishery - estimated level of reporting** | |
|---|---|
| **Year** | **Set net** |
| 2013/14 | 8% of birds caught |
| 2014/15 | 6% of birds caught |
| 2015/16 | 2% of birds caught |
| 2016/17 | 14% of birds caught |
| 2017/18 | 8% of birds caught |
| Observer coverage | 1.6% - 5.7% of effort |

**Purse seine fishery**

The purse seine fishery has a very low seabird capture rate and very few birds were observed caught over the time period covered by Forest & Bird's analysis, as a result it was excluded from the analysis.

### Comparing fishing trips with observers with fishing trips without observers

The Government's 2019 Annual Review for Highly Migratory Species revealed a significant discrepancy between the proportion of observed commercial fishing trips in the fishery that were reporting bycatch and the proportion of unobserved commercial fishing trips that were reporting bycatch. Fishing trips that had Government observers were between three and ten times more likely to report catching seabirds depending on the year. The report cautioned that reporting was a legal requirement and encouraged fishers to be more diligent. See: https://www.fisheries.govt.nz/dmsdocument/41064-Annual-Review-Report-For-Highly-Migratory-Species-Fisheries-201920

In light of this assessment, Forest & Bird sought the relevant data for the inshore and deep-water fisheries. The table below summarises the comparison of the percentage of non-observed fishing trips that reported bycatch and the percentage of observed trips that reported bycatch for the inshore and deep-water fisheries. The years chosen were to enable a match between the inshore, deep-water and highly migratory species fisheries.

**Table 3: Difference in reporting between observed and non-observed trips in the inshore and deep-water fisheries**

| Inshore fishery | | | |
|---|---|---|---|
| **Year** | **Non-observed** | **Observed** | **Difference** |
| 2016-17 | 0.6 | 4.8 | 8 times |
| 2017-18 | 0.8 | 4.1 | 5 x (5.125) times |
| 2018-19 | 0.4 | 3.8 | 9.5 times |
| **Deepwater fishery** | | | |
| **Year** | **Non-observed** | **Observed** | **Difference** |
| 2016-17 | 3.8 | 9.8 | 2.5 times |
| 2017-18 | 4.0 | 11.6 | 2.9 times |
| 2018-19 | 3.5 | 12.3 | 3.5 times |

This data shows that the inshore fleet was between five and nine times more likely to report bycatch on fishing trips with observers and that the deep-water fleet was between two and a half and three and a half times more likely to report bycatch on trips with observers.

### Implications of this data for fisheries management

While many fishers are diligent in reporting bycatch, the wide gulf between commercial fisher reported bycatch and estimates of bycatch that are accepted by the Government indicate widespread failure by commercial fishers to meet their legal obligations to accurately report seabird bycatch. This assessment is reinforced by the much greater likelihood that fishers on vessels with observers will report bycatch incidents.

Accurate logbooks are essential to the proper functioning and sustainability of the fisheries management system, not only for reporting bycatch but also for reporting fish discards and catches and ensuring that all fish caught under the Quota Management System are accounted for. Because of the very real penalties that apply to catching fish where the fisher lacks ACE or illegally discarding low value fish (high grading), and the economic incentives that can drive illegal discarding and catching misreporting relating to unlawful fishing methods is likely to be higher than for seabird bycatch and undermines confidence in the entire fisheries management system.

Although there are problems across all the fisheries, which shows that universal camera coverage is needed. The most urgent need is inshore and on set nets where rates of bycatch reporting appear significantly lower and where observer coverage is often impracticable.

If placing cameras and observers on set net vessels is not practicable then it raises a serious question of whether set net fisheries can be sustainably managed.